

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. Washington Wholesale Tobacco & Candy Distributors, Inc.; Retail Cigar Dealers Association of Seattle; Washington Tobacco Bureau, Inc.; Glaser Bros; Brewster Cigar Company; L. Marks & Co., Inc.; Sterling Tobacco Co., Inc.; Sam Lavroff & Company; Feek Cigar Company; B. & P. Distributors, Inc.; Green's Tobacco Shop; Ben Paris Sporting Goods & Recreation Co., Inc.; Northwest Recreation, Inc.; Chris Culmbach; Ben F. Hibbard; Solomon G. Spring; James R. Brewster; H. D. Bracken; Fred C. Robeson; Louis Marks; Joseph D. Burke; Ben M. Paris; Jay E. Dootson; Samuel Lavroff; Lena Feek; Joe Bernbaum; K. G. Leghorn; Robert Eilenberg; Jacob Keiter; Maurice Stoffer; John Frear; Dean Efner., U.S. District Court, W.D. Washington, 1940-1943 Trade Cases ¶56,234, (Aug. 24, 1942)

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United States of America v. Washington Wholesale Tobacco & Candy Distributors, Inc.; Retail Cigar Dealers Association of Seattle; Washington Tobacco Bureau, Inc.; Glaser Bros; Brewster Cigar Company; L. Marks & Co., Inc.; Sterling Tobacco Co., Inc.; Sam Lavroff & Company; Feek Cigar Company; B. & P. Distributors, Inc.; Green's Tobacco Shop; Ben Paris Sporting Goods & Recreation Co., Inc.; Northwest Recreation, Inc.; Chris Culmbach; Ben F. Hibbard; Solomon G. Spring; James R. Brewster; H. D. Bracken; Fred C. Robeson; Louis Marks; Joseph D. Burke; Ben M. Paris; Jay E. Dootson; Samuel Lavroff; Lena Feek; Joe Bernbaum; K. G. Leghorn; Robert Eilenberg; Jacob Keiter; Maurice Stoffer; John Frear; Dean Efner.

1940-1943 Trade Cases ¶56,234. U.S. District Court, W.D. Washington, Northern Division. Civil action No. 570. Dated and filed August 24, 1942.

Tobacco jobbers and retailers are enjoined by a consent decree from entering into any agreement to fix prices (other than an agreement valid under Federal and state laws) for tobacco or tobacco products sold in western Washington, to fix mark-ups, to classify dealers or distributors for the purpose of discrimination, to fix channels of distribution or allocations of business, or to circulate any suggested price list. Defendants are enjoined from participating in any meeting or conference for the purpose of agreeing upon prices, allocating business, etc., and a defendant association is dissolved.

Entered by LLOYD L. BLACK, D. J.

For complainant: Francis Biddle, Attorney General; Charles S. Burdell, Special Assistant to the Attorney General; Thurman Arnold, Assistant Attorney General; J. Charles Dennis, United States Attorney; Robert McFadden and John H. Daly, Special Attorneys, Department of Justice.

For defendants: Anthony Savage, Wheeler Grey, and Van C. Griffin, all of Seattle, Wash.

Final Judgment

The Complainant, United States of America, having filed its complaint herein on August 24, 1942, and all parties having severally consented to the entry of this final decree herein without trial or adjudication of any issue of fact or law herein and without admission by any party in respect of any such issue,

Now, therefore, before any testimony has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon consent of all parties signatory hereto, it is hereby

Ordered, adjudged and decreed as follows:

I.

[*Jurisdiction*]

That the Court has jurisdiction in the subject matter hereof and of all the parties hereto, and that the complaint states a cause of action against defendants and each of them for violation of [Section 1 of the Sherman Act](#) and the acts amendatory thereof, and supplemental thereto.

II.

[*Definitions*]

As used in this decree:

A. The term "national manufacturers" means those companies and individuals which engage in one or more of the following activities: cultivating, growing, processing, handling, packing, producing, and manufacturing tobacco and tobacco products as hereinafter defined outside the State of Washington and which distribute and sell such tobacco and tobacco products in the State of Washington.

B. The term "manufacturers' representatives" means those individuals and companies which act as representatives or agents in the State of Washington for such national manufacturers in the distribution and sale of such tobacco and tobacco products the term includes individuals and companies acting as brokers and commission men in the sale and distribution of such products for and on behalf of such manufacturers.

C. The term "wholesalers" means those individuals and companies engaged in the business of stocking, selling and distributing tobacco and tobacco products at wholesale to retailers as hereinafter defined. D. The term "desk jobbers" means those individuals engaged in the business of taking orders for tobacco and tobacco products for shipment by a national manufacturer direct to retailers.

E. The term "retailers" means those companies and individuals engaged in the business of distributing and selling tobacco and tobacco products to consumers.

F. The term "tobacco products" means cigars and cigarettes and other tobacco products, manufactured in whole or in part from the tobacco plant or leaf, such as pipe tobacco, chewing tobacco, snuff, and other tobacco products so manufactured.

G. The term "wholesale prices" means the prices at which tobacco and tobacco products are sold by wholesalers to retailers.

H. The term "retail prices" means the prices at which tobacco and tobacco products are sold by retailers to consumers.

I. The term "western washington territory" means all that part of the state of washington lying west of the cascade mountains.

III.

[*Activities Enjoined*]

Each of the defendants and each of their directors, officers, agents, employees, subsidiaries and successors and all persons acting or claiming to act under, through, or for them, or any of them, is hereby enjoined and restrained, in connection with the conducting of a jobbing or retail business, from entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan or program with any other defendant, jobber or retailer or a representative thereof to do or attempt to do or to induce other's to do the following things, or any of them, in the Western Washington Territory, as hereinabove defined:

- a. Determine, fix, maintain or adhere to prices for tobacco or any tobacco product sold or distributed in the western washington territory in interstate trade and commerce, including any phases of retail trade which may be in interstate commerce, except that any retailer may agree with any national manufacturer or wholesaler, or any wholesaler may agree with any retailer or national manufacturer to maintain a sale price on any tobacco or tobacco product, in so far as such agreement shall be valid under all applicable federal and state laws;
- b. Fix, determine, maintain, make uniform or prevent changes in mark-ups or amounts to be added to or included in prices for any tobacco or tobacco product sold or distributed in the western washington territory in interstate trade or commerce, including any phases of retail trade which may be in interstate commerce;
- c. classify or designate any individual or company as entitled or as not entitled, to purchase, deal in, or distribute tobacco or any tobacco product or as an individual or company to be discriminated in favor of or against, or to coerce, compel, advise or persuade any national manufacturer, distributor or other person, to refrain from selling or distributing to, or to discriminate in favor of or against any individual or company in the sale or distribution of tobacco or any tobacco product;
- d. Fix, determine, designate or maintain channels of distribution or allocations of business for any tobacco or any tobacco product;
- e. Circulate, issue, adopt or compile any suggested price list for tobacco or any tobacco product sold or distributed in the western washington territory in interstate trade or commerce, including any phases of retail trade which may be in interstate commerce.

IV.

Each of the defendants and each of their directors, officers, agents, employees, subsidiaries and successors and all persons acting under, through, or for them, or any of them is hereby enjoined and restrained, in connection with the conducting of a jobbing or retail business, from doing, attempting to do, or inducing others, in the Western Washington Territory, as hereinabove defined to sponsor, call, hold or participate in any meeting or conference, whether of the Washington Wholesale Tobacco & Candy Distributors, Inc., the Retail Cigar Dealers Association of Seattle, or otherwise, for the purpose of securing adherence to, or discussing with a view to agreeing upon, agreeing upon, or maintaining prices, terms and conditions of sale, amounts to be included in or deducted from prices, or allocations of business by jobbers, or retailers, or for the purpose of maintaining or furthering any contract, agreement, plan, program or other concerted action to prevent, hinder, or discourage any individual or company from engaging in the distribution or sale of tobacco or any tobacco product, or for the purpose of maintaining or furthering any activity prohibited by Section III hereof.

V.

[Dissolution Ordered]

Each of the defendants and each of their directors, officers, agents, employees, subsidiaries and successors and all persons acting under, through, or for them or any of them shall forthwith take such steps as are necessary to dissolve and liquidate defendant Washington Tobacco Bureau, Inc.

VI.

[Activities Not Prohibited by Decree]

- a. Nothing contained herein shall be deemed to affect activities which are otherwise lawful within a wholesale sponsored voluntary chain, or within a retailer owned group, or within jobber owned or controlled retail outlets, and nothing in this decree shall be deemed to prohibit a defendant wholesale sponsored voluntary chain or defendant retailer owned wholesale group or defendant jobber owned or controlled retail outlets from engaging in such cooperative advertising activities as may be otherwise lawful. This provision shall not be deemed to pass

upon the legality of the activities of wholesale sponsored voluntary chains, retailer owned wholesale groups, or jobber owned or controlled retail outlets, nor upon the legality of cooperative advertising.

b. Nothing contained in this decree shall apply to the conduct of the individual business of any defendant; nor shall this decree prohibit any purchase or sale of tobacco or any tobacco products by a defendant from or to another defendant or from or to another jobber or retailer; nor shall anything in this decree apply to any agreement or action taken between a defendant and any of its subsidiaries, or between the subsidiaries of any defendant, or between a defendant and its parent corporation, or between a defendant corporation and any corporation affiliated with it through common ownership of a majority of the voting stock of both corporations, or between any such affiliated corporations of a defendant corporation.

VII.

[Department of Justice to Have Access to Records, interviews and Reports]

For the purpose of securing compliance with this Decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or an Assistant Attorney General, and on reasonable notice to the defendants made to the principal office of the defendants, be permitted subject to any legally recognized privilege (1) access, during the office hours of the defendants, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendants, relating to any matter contained in this Decree, (2) without restraint or interference from the defendants to interview officers or employees of the defendants, who may have counsel present, regarding any such matters, and (3) to require the defendants, on such written request, to submit such reports in respect of any such matters as may from time to time be reasonably necessary for the proper enforcement, and only for such proper enforcement, of this Decree; provided, however, that information obtained by the means permitted in this paragraphs shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings for the purpose of securing compliance with this Decree in which the United States is a party or as otherwise required by law.

VIII.

[Jurisdiction Retained]

a. Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this Decree to apply to the Court at any time for such, further orders and directions as may be necessary or appropriate for the construction or carrying out of this Decree, for the modification or termination of any of the provisions thereof; for the enforcement of compliance therewith, and for the punishment of violations thereof.

[No Implication That Facts Warrant Judicial Restraint]

b. The above decree is entered without implication by the Court that, in the absence of consent by the defendants, the underlying facts legally warrant judicial restraint of the activities enjoined by the decree.